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NO. 85-522

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

ALLIED BOND AND COLLECTION AGENCY,
Appellant,

v.

COMMONWEALTH OF MASSACHUSETTS,
Appellee

Motion To Dismiss The Appellant's Appeal
Or To Affirm The Judgment Of The Supreme
Judicial Court Of Massachusetts

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QUESTION PRESENTED

Whether this Court should review a state court decision that the commerce clause does not prohibit Massachusetts from applying its debt collection agency licensing requirements to an out-of-state collection agency operating in the state, when Congress has expressly recognized the continuing validity of state debt collection laws, and the Massachusetts requirements are even-handed measures which achieve a valid state purpose with a minimal burden on interstate commerce.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
MOTION TO DISMISS THE APPELLANT'S APPEAL OR TO AFFIRM THE JUDGMENT OF THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS	1
STATEMENT OF THE CASE	1
ARGUMENT	9
I. Allied's Appeal Raises No Substantial Question.	10
II. The Supreme Judicial Court Properly Rejected Each Of Allied's Arguments Challenging The Constitutionality Of The Massachusetts Requirements.	19
A. A State Is Not "Per Se" Barred From Licensing An Activity Merely Because The Activity Is In Interstate Commerce.	20
B. The Massachusetts Requirements Do Not Unconsitutionally Discriminate Against Non-Massachusetts Firms.	24

Page

C. The Burden On Inter-State Commerce Is Not Excessive In Relation To The Local Benefits. 27

CONCLUSION 36

TABLE OF AUTHORITIES

Page

CASES

Aldens, Inc. v. LaFollette, 552 F.2d 745 (7th Cir. 1977), cert. denied, 434 U.S. 880 (1977) 12,13,22n,23,24

Aldens, Inc. v. Miller, 466 F. Supp. 379 (S.D. Iowa 1979) aff'd, 610 F.2d 538 (8th Cir. 1979), cert. denied, 446 U.S. 919 (1980) 12,13,22n

Aldens, Inc. v. Packel, 524 F.2d 38 (3d Cir. 1975) cert. denied, 425 U.S. 943 (1976) 12,13,22n

Aldens, Inc. v. Ryan, 571 F.2d 1159 (10th Cir. 1978) cert. denied, 439 U.S. 860 (1978) 12,13,22n

Allenberg Cotton Co., Inc. v. Pittman, 419 U.S. 20 (1974) 22,22n,23,25n

California v. Thompson, 313 U.S. 109 (1941) 21

Dean Milk Co. v. Madison, 340 U.S. 349 (1951) 31

Dun & Bradstreet, Inc. v. McEldowney, 564 F. Supp. 257 (D. Idaho 1983) 13n

Page

Eli Lilly & Co. v. Sav-On-Drugs, Inc., 366 U.S. 276 (1961) 22

Exxon Corp. v. Governor of Maryland, 437 U.S. 117 (1978) 16,17,17n,28,34

Hughes v. Oklahoma, 441 U.S. 322 (1979) 26

Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333 (1977) 26,26n

Huron Portland Cement Co. v. Detroit, 362 U.S. 440 (1960) 28

International Textbook Co. v. Pigg, 217 U.S. 91 (1910) 22

Kassel v. Consolidated Freightways Corp. 450 U.S. 662 (1981) 27

Meierhenry v. Spiegel, Inc., 277 N.W.2d 298 (S.Dak. 1979) appeal dismissed 444 U.S. 804 (1979) 13n

Milk Control Board v. Eisenberg Farm Products, 306 U.S. 346 (1939) 21

Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456 (1981) 26,28,30,32

Moorman Manufacturing Co. v. Bair, 437 U.S. 267 (1978) 28

	Page
Pike v. Bruce Church, Inc., 397 U.S. 137 (1970)	passim
Raymond Motor Transportation, Inc. v. Rice, 434 U.S. 429 (1978)	27,34
Robertson v. California, 328 U.S. 440 (1946)	21
Silver v. Woolf, 694 F.2d 8 (2nd Cir. 1982) cert. denied 460 U.S. 1070 (1983)	13,22n
Toomer v. Witsell, 334 U.S. 385 (1948)	16,31

STATUTES

15 U.S.C. §§1692-1692o (Fair Debt Collection Practices Act)	passim
15 U.S.C. §1692n	passim
M.G.L. c. 93, §§24-28	passim
M.G.L. c. 93, §§24	2,9
M.G.L. c. 93, §24A	2,9
M.G.L. c. 93, §24B	2,3,9
M.G.L. c. 93, §24C	2,4
M.G.L. c. 93, §§24D	3,9
M.G.L. c. 93, §25	2
M.G.L. c. 93, §26	2

	Page
M.G.L. c. 93, §28	3
Mass. St. 1910, c. 656	11n

REGULATIONS

209 Code Mass. Reg. 18.00 et seq.	passim
209 Code Mass. Reg. 18.01	24n
209 Code Mass. Reg. 18.04	2
209 Code Mass. Reg. 18.05	4,9,29n
209 Code Mass. Reg. 18.07	3
209 Code Mass. Reg. 18.08	3,9
209 Code Mass. Reg. 18.09	3,4,9
209 Code Mass. Reg. 18.10	3
209 Code Mass. Reg. 18.11	3
209 Code Mass. Reg. 18.15	3
209 Code Mass. Reg. 18.19	3
209 Code Mass. Reg. 18.20	4,4n,9

MOTION TO DISMISS THE APPELLANT'S APPEAL OR TO AFFIRM THE JUDGMENT OF THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Pursuant to Rule 16 of this Court, the Commonwealth of Massachusetts moves that this appeal be dismissed or that the judgment of the Supreme Judicial Court for the Commonwealth of Massachusetts ("SJC") be affirmed on the grounds that the SJC's decision is plainly correct and the question presented by the jurisdictional statement is not so substantial as to warrant plenary review.

STATEMENT OF THE CASE

1. Massachusetts utilizes a comprehensive system to regulate debt collection businesses engaged in the collection of debts from persons within the state. Mass. G.L. c. 93 §§24-28 and 209 Code Mass. Reg. 18.00 et seq. All debt

collection agencies must qualify for and obtain a license in order to do business in the state. Mass. G.L. c. 93, §§24-24A. The license may subsequently be revoked if the collection agency violates regulatory requirements. Mass. G.L. c. 93, §24C.

The Massachusetts licensing authority, the Commissioner of Banks ("the Commissioner") requires applicants to furnish financial statements and references and determines the applicant's reputation, integrity, and financial condition. Mass. G.L. c. 93 §24B and 209 Code Mass. Reg. 18.04. The collection agency must post a $10,000 bond to insure that the agency will turn over to creditors the proceeds collected. Mass. G.L. c. 93, §§24, 25, and 26. Each collection agency is required to submit an annual report and financial statement to

the Commissioner. G.L. c. 93, §§24B and 24D and 209 Code Mass. Reg. 18.08.

All debt collection agencies are required to account to each creditor for all proceeds collected, Mass. G.L. c. 93, §28 and 209 Code Mass. Reg. 18.09, and are prohibited from commingling money collected for creditors with the collection agency's own funds. 209 Code Mass. Reg. 18.10. The Commissioner's regulations prohibit a number of abusive collection practices, 209 Code Mass. Reg. 18.07 and 18.11 et seq., and require written notice by the collection agency to the debtor in certain circumstances. 209 Code Mass. Reg. 18.15(i) and 18.19.

Those collection agencies which engage mainly or preponderantly in the collection of retail accounts against consumer debtors are required to main-

tain an office in the Commonwealth. 209 Code Mass. Reg. 18.05. Such "consumer collection agencies" must maintain in this office a copy of books and records disclosing debts of Massachusetts debtors, amounts of payments by such debtors, and remittances made to creditors in relation to such debts. 209 Code Mass. Reg. 18.09. The law requires that the Commissioner of Banks have free access to these books and records, Mass. G.L. c. 93, §24C, and provides that debtors may come to the office to inspect and copy papers and accounts relating to the debt being collected. 209 Code Mass. Reg. 18.20.[1/]

1/ Section 18.20 of the Massachusetts regulation provides in part:

(footnote continued)

2. Debt collection from consumer debtors is also regulated by the federal Fair Debt Collection Practices Act. 15 U.S.C. §§1692-1692o. That statute, however, does not preempt state oversight of debt collection operations. On the contrary, Congress expressly provided that state laws may afford protection to consumers which is as great as, or greater than, the protection provided by the

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(footnote continued)

> It shall constitute an unfair or deceptive act or practice for a collection agency to fail to allow a debtor or an attorney for a debtor to inspect and copy the following materials regarding a debt during normal business hours of the collection agency and upon notice given to such collection agency not less than five business days preceding the scheduled inspection. . . .

federal statute. 15 U.S.C. §1692n.[2/]

3. The appellant Allied Bond and Collection Agency ("Allied") does extensive business in Massachusetts,[3/]

2/ Section 1692n provides as follows:

> This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.

3/ In the year 1979, for example, Allied attempted to collect 3,558 accounts from debtors residing in Massachusetts, representing a total value of $1,020,693. A preponderance of these accounts involved consumer debtors residing in Massachusetts. [A-33, para. 12, 13 (Statement of Agreed Facts)].

yet it has refused to seek a Massachusetts license or otherwise comply with the Massachusetts requirements. [A-32, para. 8 (Statement of Agreed Facts)]. On the other hand, as of early 1984, there were 167 licensed collection agencies operating in Massachusetts in compliance with the state's requirements. Twenty-seven of these agencies had home offices outside the state, but unlike Allied, all 27 had complied with the Massachusetts licensing requirements, including the requirement of a local office. [A-10 (Affidavit of Alfred P. Quirk, Supervisor of Loan Agencies)].

4. The Attorney General brought this action against Allied in 1977, seeking to enjoin the operation of the company's business in the Commonwealth until it had obtained a license and complied with the

other statutory and regulatory requirements. After filing cross motions for summary judgment, the parties filed a joint petition for direct appellate review by the SJC.

On April 18, 1985, the SJC held that the Massachusetts statutory and regulatory requirements could be applied to Allied without violating the commerce clause of the United States Constitution. The court rejected each of Allied's alternative arguments, advanced again before this Court, that the Commonwealth's licensing and local record keeping requirements impermissibly burden interstate commerce.

Allied subsequently filed a petition for rehearing with the SJC. The petition was denied on May 29, 1985. Allied now appeals from the state court decision.

ARGUMENT

Allied challenges the following Massachusetts requirements for debt collection agencies doing business in the state:

> (1) all collection agencies must qualify for and obtain a license in order to do business in the state (Mass. G.L. c. 93, §§24, 24A);
>
> (2) all collection agencies must submit annual reports and financial statements to the Commissioner (Mass. G.L. c. 93, §§24B and 24D and 209 Code Mass. Reg. 18.08);
>
> (3) all consumer collection agencies must maintain an office in the Commonwealth where copies of records relating to Massachusetts debts shall be kept and made available for inspection by creditors, debtors, and the Commissioner of Banks (209 Code Mass. Reg. 18.05, 18.09 and 18.20).4/

4/ Although not mentioned by Allied in its Question Presented (Jurisdictional Statement, page (i)), Allied also appears to challenge the requirement of a $10,000 bond. See Jurisdictional Statement, pages 13 and 54.

Allied's appeal does not raise issues of federal significance that warrant plenary review by this Court.

I. Allied's Appeal Raises No Substantial Question.

There is no special national interest in the matters at issue in this case. The Massachusetts requirements do not interfere with the national interest in the free movement of money, credit, goods and services. Congress has specifically stated that a uniform national rule for the regulation of debt collection agencies is not required and that states may impose requirements which afford consumers greater protection than provided by federal law. 15 U.S.C. §1692n.

With a minimal, even-handed effect on interstate commerce, the Massachusetts requirements address traditional matters

of local concern.[5/] The requirements further an ongoing, neutral system of oversight by preventing the use of abusive collection practices and assuring that collection businesses are financially sound. They guarantee access to collection agency records by the Commissioner and consumers, and promote accurate accounting by collection agencies of debts, payments by debtors, and remittances to creditors. The measures apply equally to in-state and out-of-state firms, and are imposed only to the extent necessary to carry out the state's regulatory purpose.

There is no need for this Court to make a statement on the issues raised by Allied. The SJC's decision fairly

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5/ The Massachusetts bond requirement, for example, was first enacted in 1910. Mass. St. 1910, c. 656.

balanced the interests of the parties, and it is in accord with the settled state of the law.

For example, in a series of related decisions, four Circuit Courts have upheld state regulatory measures against commerce clause challenges after considering arguments strikingly similar to those raised in the present case. Aldens, Inc. v. Miller, 466 F. Supp. 379, 382-383 (S.D. Iowa 1979), aff'd, 610 F.2d 538 (8th Cir. 1979), cert. denied, 446 U.S. 919 (1980); Aldens, Inc. v. Ryan, 571 F.2d 1159, 1162 (10th Cir. 1978), cert. denied, 439 U.S. 860 (1978); Aldens, Inc. v. LaFollette, 552 F.2d 745, 752-753 (7th Cir. 1977), cert. denied, 434 U.S. 880 (1977); Aldens, Inc. v. Packel, 524 F.2d 38, 49-50 (3d Cir. 1975), cert. denied, 425 U.S. 943

(1976).[6] In addition, Allied was recently unsuccessful in a commerce clause challenge to a Connecticut licensing requirement for debt collection agencies. Silver v. Woolf, 694 F.2d 8 (2nd Cir. 1982), cert. denied, 460 U.S. 1070 (1983).[7]

The Circuit Courts in Aldens and Silver carefully applied the relevant precedent from this Court in upholding the applicable state law as a valid

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6/ See also Meierhenry v. Spiegel, Inc., 277 N.W.2d 298 (S.Dak. 1979), appeal dismissed, 444 U.S. 804 (1979), which rejected a similar commerce clause challenge.

7/ Connecticut did not require that Allied maintain records in an office in the state. But see Dun & Bradstreet, Inc. v. McEldowney, 564 F. Supp. 257, 262-263 (D. Idaho 1983), which upheld an in-state office requirement for a collection agency which specialized in commercial, not consumer, accounts.

exercise of state power. No recent decisions have altered the principles followed in those cases and in the Supreme Judicial Court's decision upholding the Massachusetts requirements.

The Massachusetts local office and record keeping requirement, on which Allied focuses much of its challenge, does not require novel or significant legal analysis by this Court. The SJC's decision does not prevent Allied from continuing its daily operation from Pennsylvania, including its telephone and mail contacts and its centralized system of record keeping. Contrast, Pike v. Bruce Church, Inc., 397 U.S. 137, 145 (1970).

Allied does not contend that compliance with the Massachusetts office and record keeping requirement is inherently impossible; rather, Allied complains that

it will incur an unspecified amount of additional costs which will harm its ability to conduct a profitable business. Allied's claim, however, consists only of argumentative speculation. The record below does not show the amount of these costs nor the impact of such costs on Allied,[8/] and therefore it is not suitable for plenary review of this issue.

Moreover, even if Allied's factual contentions were supported by the record, it has long been held that state regulation of commerce is not invalid merely because it may increase costs. E.g.,

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8/ The only facts in the record relating to Allied's income, expenses, and profits involve its Massachusetts operation in the year 1979. [A-33, para. 13-16 (Agreed Statement of Facts); A-22, 23 para. 24-28 (Affidavit of Herbert R. Silver)]. There are no facts relating to projected costs of the office requirement if Allied were to comply with it.

Toomer v. Witsell, 334 U.S. 385, 410 (1948) (concurring opinion). The commerce clause does not guarantee a profit to each firm in interstate commerce. Exxon Corp. v. Governor of Maryland, 437 U.S. 117, 127-128 (1978).

Finally, Allied argues that because several states impose requirements on collection agencies, Allied should be free to ignore them all. Jurisdictional Statement, pages 52-55.[9/] However,

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9/ Chaos would result from the ruling which Allied requests. A state could apply its otherwise permissible regulatory requirements only to those out-ofstate firms who do business in a small number of other states which have similar requirements. If an out-of-state firm expanded its operations into too many states which had such requirements, or if too many states in which the firm operated chose to add the requirements, all states would be required to cease applying the requirements to the particular firm. Allied does not suggest the minimum number of regulating states which would trigger such immunity. Resolution by the courts would be necessary on a case-by-case basis.

Congress has expressly provided in the Fair Debt Collection Practices Act that the states may regulate debt collection agencies and that such regulation need not be uniform. 15 U.S.C. §1692n.[10/]

Allied asks this Court to protect the firm's "present character as a full-service intrastate [sic] collection agency and the economic efficiencies attendant to its present method of doing business." (Jurisdictional Statement, page 55). Even if an economic market is nationwide, however, it does not follow that the states are without the power to regulate in that market. Exxon Corp. v. Governor of Maryland, 437 U.S. at 128.[11/]

10/ The text of 15 U.S.C. §1692n is set forth above at page 6, footnote 2.

11/ The Court also stated in Exxon:

(footnote continued)

Allied's argument is better left to Congress, for Congress has plenary power over such matters and may, as here, expressly authorize state regulation in the area.

Compliance with the requirements imposed upon Allied by Massachusetts in fact represents the reasonable cost of doing business in a modern economy. A company like Allied, which seeks to do business in all 50 states, must bear the additional costs of such widespread activity. As Congress recognized in the Fair Debt Collection Practices Act, that

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(footnote continued)

> We cannot ... accept appellants' underlying notion that the Commerce Clause protects the particular structure or methods of operation in a retail market.

437 U.S. at 127.

cost includes complying with applicable state laws.

There is simply no substantial commerce clause issue presented in this case. The Massachusetts requirements are well within the parameters of permissible state regulation. This is not a case which requires plenary review by this Court.

II. The Supreme Judicial Court Properly Rejected Each Of Allied's Arguments Challenging The Constitutionality Of The Massachusetts Requirements.

If this Court were to undertake plenary review, it would find no error in the SJC's decision. Each of Allied's four alternative arguments was properly rejected, as the state court correctly applied controlling principles from the decisions mentioned above and appropriately distinguished the cases cited by

Allied.[12/]

A. A State Is Not "Per Se" Barred From Licensing An Activity Merely Because The Activity Is In Interstate Commerce.

Allied first contends that the Massachusetts requirements are per se invalid because an out-of-state business operating in interstate commerce may not be required to obtain a license before doing business in the state, no matter how legitimate or crucial the state's interest and no matter how reasonable the state's licensing requirement.

Such a contention was firmly rejected by this Court nearly a half century ago, and it is now clear that

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12/ Even if the SJC had erred in the application of settled law to the sparse facts of this case, the issues raised present no strong reason for plenary Supreme Court review. Therefore, the analysis of the merits presented here will be only summary in nature.

the commerce clause does not bar a state from requiring licenses from interstate businesses and imposing reasonable conditions on their interstate commerce transactions in order to effectuate legitimate state policies. See, e.g., California v. Thompson, 313 U.S. 109, 113 (1941); Milk Control Board v. Eisenberg Farm Products, 306 U.S. 346, 351-352 (1939). For example, in Robertson v. California, 328 U.S. 440 (1946), the Court concluded:

> [W]e are far beyond the time when, if ever, the word "license" per se was a condemnation of state regulation of interstate business done within the state's borders.

328 U.S. at 458.

The cases relied on by Allied do not require a different result. Allied seeks to avoid the balancing test of Pike v. Bruce Church, Inc. 397 U.S. 137,

142 (1970), by relying on cases involving laws which deny state court access to foreign corporations as a method of coercing compliance with general foreign corporation registration requirements. Allenberg Cotton Co., Inc. v. Pittman, 419 U.S. 20 (1974); Eli Lilly & Co. v. Sav-On-Drugs, Inc., 366 U.S. 276 (1961); International Textbook Co. v. Pigg, 217 U.S. 91 (1910). These cases, however, do not stand for the "per se" prohibition against licenses urged by Allied.[13/] Rather, they involve burdensome state regulation with minimal local benefit, thereby placing them at the extreme end of the balancing required by Pike v. Bruce Church, Inc. See Aldens,

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13/ Allied's interpretation of Allenberg, the most recent of these cases, was rejected by all four Circuit Courts in the Aldens cases and by the Circuit Court in Silver v. Woolf, discussed above at pages 12-13.

Inc. v. LaFollette, 552 F.2d 745, 753 (7th Cir. 1977).

The requirements challenged by Allied are in direct contrast to those at issue in Allenberg. The Massachusetts requirements effectuate a specific public welfare purpose, and the regulated activity consists of significant, ongoing contacts with Massachusetts by the out-of-state firm. Unlike the interstate cotton and grain markets discussed in Allenberg, debt collection does not receive or require special federal protection. The denial of court access to enforce a valid contract involved in the cases cited by Allied may be a disproportionate sanction, whereas the Massachusetts debt collection requirements do not impose such a "generically undue" burden on interstate commerce. See Aldens, Inc. v.

LaFollette, 552 F.2d 745, 753 (7th Cir. 1977).

B. The Massachusetts Requirements Do Not Unconstitutionally Discriminate Against Non-Massachusetts Firms.

The Massachusetts requirements are neutral on their face and apply equally to in-state and out-of-state collection firms. They are not protectionist measures intended to insulate local collection firms from outside competition, and Allied has offered no evidence of such a purpose.14/

14/ See 209 Code Mass. Reg. 18.01, Purpose of Regulations:

> The purpose of these regulations is to establish standards, by defining unfair or deceptive acts or practices, for the collection of debts from persons within the Commonwealth of Massachusetts by collection agencies and the conduct of the business of collection agencies.

Nonetheless, Allied contends that the office and record keeping requirement is discriminatory in effect, if not intent.[15/] Allied has not met and cannot meet its burden of proof that this requirement is unconstitutionally discriminatory. See, Hughes v.

15/ Allied seeks in its "discriminatory effect" argument (Jurisdictional Statement, pages 31-39) to draw the Court's attention to language in Pike v. Bruce Church, Inc. that it is "virtually per se illegal" for a state to require business operations to be performed in the home state that could more efficiently be performed elsewhere. 397 U.S. at 145. By this argument, like its earlier assertion that the licensing requirements are "per se invalid" under Allenberg Cotton v. Pittman, Allied asks this Court to invalidate the Massachusetts licensing requrirements without considering the balancing test of Pike. Because the "virtually per se" language arose in the Court's application of the balancing test to the facts in Pike, the Commonwealth will address Allied's "virtually per se" argument in its discussion of the balancing test (pages 31-32, below).

Oklahoma, 441 U.S. 322, 336 (1979).[16] Like the other Massachusetts debt collection agency requirements, the office and record keeping requirement "regulates evenhandedly," Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 471 (1981), and does not visit its effects solely on nonlocal businesses. Contrast Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333, 351 (1977). No extra or special requirements are imposed on out-of-state agencies regarding their office in Massachusetts, and no special

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16/ Even if a facially neutral statute has a discriminatory effect against interstate commerce, it is not necessarily unconstitutional. Rather, if the statute is justified both in terms of the local benefits flowing from the statute and the unavailability of nondiscriminatory alternatives adequate to preserve the local interests at stake, it will be upheld. Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333, 353 (1977), citing, inter alia, Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970).

exemptions are granted to local agencies. Contrast Kassel v. Consolidated Freightways Corp., 450 U.S. 662, 676-678 (1980); Raymond Motor Transportation, Inc. v. Rice, 434 U.S. 429, 446-447 (1981).

C. The Burden On Interstate Commerce Is Not Excessive In Relation To The Local Benefits.

As with its "discriminatory effect" argument, Allied addresses its "excessive burden" argument to the local office and record keeping requirement. Essentially, Allied complains that compliance will be costly and will harm its ability to conduct a profitable business. As discussed above (pages 14-15), the record contains no evidence of the costs of compliance nor how such costs would substantially harm Allied's business. Allied merely speculates that the costs would be prohibitive. The

silence of the record is critical here, first because Allied failed to sustain its heavy burden of proof, and second because speculative concerns are not a sufficient basis for invalidation of state law under the commerce clause. Moorman Manufacturing Co. v. Bair, 437 U.S. 267, 276, 280 (1978).

Moreover, as also noted earlier, many regulations of commerce have been upheld although they were found to increase costs. See, e.g., Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 460, 471-474 (1981); Huron Portland Cement Co. v. Detroit, 362 U.S. 440 (1960). The test is whether interstate commerce is burdened generally. Exxon Corp. v. Governor of Maryland, 437 U.S. 117, 127-128 (1978).

Massachusetts merely requires that in-state and out-of-state collection

agencies operating in the state maintain an "office" in Massachusetts where copies will be kept of the company's records relating to collection activity with Massachusetts debtors. There is no minimum office size, staffing or equipment requirement. There is no requirement as to the office's location within the state or as to the days and hours the office must be open. The space and staff for the office may be shared with other businesses.17/

Even if the local office requirement imposes a constitutionally recognizable burden on interstate commerce, Allied will not be able to establish that the burden is "clearly excessive" in

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17/ See 209 Code Mass. Reg. 18.05, which provides that a collection agency may not share quarters with a practicing attorney, constable, private detective, police officer, or other law enforcement officer.

relation to the local interests involved, as required by Pike v. Bruce Church, Inc. The office requirement enables the Commissioner to oversee collection agency activities effectively and promotes collection agency accountability by affording both the Commissioner and consumers access to records relating to Massachusetts debtors.

The alternative methods suggested by Allied are inadequate and would not achieve the Commonwealth's goals. See Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 473 (1981). The Fair Debt Collection Practices Act and the state bonding requirement do not provide the local oversight of debt collection activities accomplished by the overall Massachusetts regulatory scheme. The local unannounced inspections are necessary to fulfill the Commissioner's

auditing responsibilities. [A-12, 13 (Affidavit of Robert S. Leadbetter, Deputy Commissioner of Banks)].[18/]

The present case is clearly distinguishable from cases cited by Allied holding that a state requirement is "virtually per se illegal" if it requires business operations to be performed in the home state that could more efficiently be performed elsewhere. See, Pike v. Bruce Church, Inc., 397 U.S. 137 (1970); Dean Milk Co. v. Madison, 340 U.S. 349 (1951); Toomer v. Witsell, 334 U.S. 385 (1948). The Massachusetts requirements do not force Allied to move its business operations

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18/ By suggesting as an alternative that the Commonwealth conduct inspections in Pennsylvania at Allied's expense, Allied implies that this increased cost would be acceptable but that the cost of the local record keeping requirement would not. Thus, the issue is merely one of degree, not one which is worthy of plenary review.

here or conduct its collection activities in the state. Moreover, Massachusetts' interest in addressing the special problems historically posed by debt collection activities is manifest, while Pike involved only a "tenuous" economic interest which was "minimal at best". Pike v. Bruce Church, Inc., 397 U.S. at 145, 146.

The Massachusetts requirements are necessary to achieve the Commonwealth's objectives in protecting Massachusetts debtors and creditors and are not "clearly excessive" in view of the substantial state interest involved. See Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 473-474 (1981).

D. The Massachusetts Requirements Are Not Unconstitutional Because Of The Cumulative Impact Of The Various Requirements Imposed By The Several States.

Allied's final argument is that Massachusetts may not apply its requirements to Allied because of the cumulative impact of similar requirements in the various states. However, neither the Massachusetts requirements nor the cumulative effect of all state requirements create an effective prohibition or impose an undue burden on interstate debt collection activities. Moreover, to the extent that there is a cumulative effect, it is sanctioned by Congressional enactment, 15 U.S.C. §1692n.

Allied's recitation of the various states' requirements reveals that in fact they are minimal in character, similar from state to state, and not so fundamentally inconsistent as to make it inherently impossible for a collection agency to comply with them simultaneously. The Massachusetts requirements

are not of an idiosyncratic nature which serves to block the flow of commerce.[19/] Thus, the Massachusetts debt collection requirements contrast with the state trucking requirements struck down in the cases relied on by Allied. E.g., Raymond Motor Transportation, Inc. v. Rice, 434 U.S. 429 (1978).

Allied has simply not shown that the consumer debt collection industry as a whole is unduly burdened by a multitude of State regulations. Exxon Corp. v. Governor of Maryland, 437 U.S. 117, 127-128. In view of Congressional approval of state regulations stricter than those imposed on collection agencies by Federal law and Congress' decision not

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19/ See A-24 to A-26 (Affidavit of Herbert R. Silver) and Allied's brief in the Supreme Judicial Court, pages 43-47.

to mandate national uniformity, 15 U.S.C. §1692n, the SJC properly rejected Allied's cumulative burden argument.

VI. CONCLUSION

For the foregoing reasons, Allied's appeal should be dismissed and the decision of the Supreme Judicial Court should be summarily affirmed.

Respectfully submitted,

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